

APPEAL NO. 032269
FILED OCTOBER 14, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 24, 2003. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does not include a hernia. The appellant (claimant) appealed, essentially on grounds of sufficiency of the evidence. The respondent (carrier) responded, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

Commission records indicate that the hearing officer's decision was mailed to the claimant on July 30, 2003. Pursuant to Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed or on August 4, 2003, in this instance. In her appeal, the claimant states that she received the decision of the hearing officer on August 8, 2003. However, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt. See Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. The record reflects that the hearing officer's decision was mailed to the claimant at the address she listed on the appearance sheet at the hearing. Thus, the appeal needed to be mailed or faxed no later than August 25, 2003, the 15th day after the deemed date of receipt. The claimant's appeal was mailed to the Commission on August 26, 2003, one day late and is, therefore, untimely.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision is final pursuant to Section 410.169.

The true corporate name of the insurance carrier is **LUMBERMEN'S MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge